IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15879 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

ARVINDBHAI AMRUTLAL HAJI & 7 - Petitioner(s)
Versus
AHMEDABAD STOCK EXCHANGE - Respondent(s)

==========

Appearance :
Mr. Unmesh Shukla for MR KUNJAL D PANDYA for Petitioner(s) : 1 - 8.
MS Dharmistha Raval for Ms. PJ DAVAWALA for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 18/11/2005

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioners have prayed for an appropriate writ, direction or order directing the respondent, Ahmedabad Stock

Exchange [hereinafter referred to as “the Stock Exchange”] to disburse a sum of Rs. 63,19,755 together with interest accrued thereon amongst the petitioners and other creditor members whose claims are accepted by the Defaulters' Committee of the respondent.

2. The respondent herein, Ahmedabad Stock Exchange is a “Stock Exchange” duly recognised under the provisions of the Securities Contracts (Regulations) Act. The Exchange is conducting its affairs in accordance with Rules, Regulations and By-laws of the Stock Exchange duly approved by the Central Government and published in the Gazette.

3. One Rajesh Anubhai Shah was a Member of the Stock Exchange who died on 7.2.1994. The deceased Member had outstanding dues to the Clearing House. Heirs and legal representatives of deceased Member by written communication dated

12.2.1994 communicated to the Stock Exchange that they are unable to fulfill the obligations of late Shri Rajesh Anubhai Shah and accordingly the Governing Board of the Stock Exchange declared the said Rajesh Anubhai Shah a deemed defaulter. The Governing Board further resolved that the Membership Right of the deceased Member vests with the Stock Exchange and the same was to be disposed of according to its rules and regulations. In the meantime, a provisional Attachment Order under Section 281-B of the Income Tax Act, 1961, was issued by the Commissioner of Income Tax in respect of the Membership Card of the said late Shri Rajesh Anubhai Shah and margin money and security deposits kept by him with the Stock Exchange. The Stock Exchange was of the view that on the death of the Member and upon declaration of the Member as a deemed defaulter by the Governing Board of the Stock Exchange, the Member's right of nomination ceases and it vests with the Stock

Exchange free from all rights, claims or interests of such Member or any other person claiming through such Member and the Governing Board is entitled to deal with or dispose of such right of the nomination as it may deem fit.

3.1. The Governing Board of the Stock Exchange by a Board Resolution dated 5.12.1994, disposed of the Membership right of the deceased Rajesh Anubhai Shah vested in the Stock Exchange in favour of UTI Securities Exchange Ltd for Rs. 27 lakhs. A Garnishee Notice dated 14th June 1995 under Section 226(3) of the Income Tax Act, 1961 was issued by the Assistant Commissioner of Income Tax, Ahmedabad to the Executive Director of the Stock Exchange. It appears from the record that the Stock Exchange opposed the said Garnishee Notice and confirmed its stand claiming that the Income Tax Department cannot claim against the proceedings of the Membership Right of the said Shri Rajesh Anubhai Shah or any asset

of the deemed defaulter, i.e., Rajesh Anubhai Shah. The Stock Exchange challenged the provisional attachment and Garnishee Notice issued by the Income Tax Department before this Court and this Court dismissed the writ petition. The Stock Exchange challenged the said decision of this Court dismissing the writ petition and confirming the provisional attachment and the garnishee notice issued by the Income Tax Department before the Hon'ble Supreme Court being Civil Appeal No. 1727 (NT) of 1998. The Hon'ble Supreme Court upheld the contention of the Stock Exchange, set aside the judgment and order passed by this Court, and also set aside the provisional attachment and garnishee notice issued by the Income Tax Department. It appears from the record that the decision of the Hon'ble Supreme Court was rendered on 2.3.2001. It appears from the record that till that time the amount realised by the Stock Exchange after disposal of membership right of the defaulter member remained

with the Stock Exchange awaiting decision of the Hon'ble Supreme Court. After the decision of the Hon'ble Supreme Court, the monies kept with the Stock Exchange were distributed among the Members inclusive of the petitioners whose claims were already adjudicated and admitted by the Stock Exchange and the same was in accordance with Rule 16(ii). It also appears that genuine claims against the deceased defaulter Member were paid in full after disposal of the proceedings by the Hon'ble Supreme Court and for such payment the amount realised on disposal of Membership Card as well as other margin, security deposit etc., was exhausted in full. It appears from the record that after payment of all such admitted claims upto 16 annas in a rupee the Stock Exchange was still having a residual money in its possession being the interest earned on the originally realised amount. During the pendency of the proceedings before the Hon'ble Supreme Court with regard to the order of provisional attachment as

well as the garnishee notice, the amount realised by the Stock Exchange by way of sale of Membership Card of the deceased and by way of his margin money and security deposits with the ASE, the same was deposited in the Fixed Deposit by the Stock Exchange and by the time the amount lying in the deposit came to be distributed among Member creditors, the deposit amount earned substantial interest and the interest amount was to the tune of Rs. 63,19,755.20 ps. at the end of 31st March 2001. Though the petitioners Member-creditors were paid 100% of their claims out of the assets of the defaulter Member, realised by the Stock Exchange they were not paid the interest and the Stock Exchange did not disburse the amount of interest accrued on the deposited amount among Member-creditors and therefore for the purpose of distribution of the aforesaid amount of interest to the tune of Rs. 63,19,755.20 ps., amongst the Member creditors, the petitioners have preferred the present

Special Civil Application under Article 226 of the Constitution of India.

4. Shri Unmesh Shukla, learned advocate appearing on behalf of the petitioners, has submitted that after intimation by the heirs of the deceased Member expressing their inability to meet the obligations of the deceased, the Defaulters' Committee declared the deceased Member as deemed defaulter and took a decision to realise the assets and to disburse money to the Member-creditors; the respective Member creditors submitted their claim in 1994; after making full payment to the respective Member-creditors, still surplus amount was with the Stock Exchange; over and above that, the Stock Exchange was having Rs. 63,19,755 being the amount received as interest on the deposit by the Stock Exchange; the actual payment was made in the year 2001 to the respective Member-creditors; and therefore when the Stock Exchange is already having a surplus

amount the same should be disbursed amongst the Member-creditors and as it took 8 years to make actual payment they are entitled to interest on the said amount. It is further submitted by Shri Shukla that the claim of interest is on the basis of equity and when the actual amount was disbursed after 7 to 8 years for whatever be the reason, and when the surplus amount is available with the Stock Exchange the decision of the Stock Exchange not to pay interest over the claims of the respective Member-creditors is absolutely illegal, arbitrary and against the equity.

5. Meeting with the contention on behalf of the respondent, relying upon Bye-law 330, it is submitted that Bye-law 330 would be applicable for the period upto realisation and the petitioners cannot be denied interest for the period after the amount is realised. It is submitted that money could not be paid due to stay order granted by the Hon'ble Supreme Court

and/or dispute with the Income Tax Department for which there is no fault on the part of the Member-creditors. Meeting with the contention on behalf of the respondent that the amount of interest on the deposits received by the Stock Exchange will be transferred to the Investors Protection Fund for the benefit of investors, Shri Shukla has submitted that Members cannot be denied amount of interest and the investors cannot be paid the amount at the cost of the Member-creditors.

6. While meeting with the preliminary contention raised on behalf of the respondent that a petition under Article 226 of the Constitution of India, for claim of interest, and it being a contractual matter, is not maintainable, to lay emphasis on his submission that in a petition under Article 226 of the Constitution of India, a writ can be issued for the purpose of refund or interest, Shri Shukla

has relied upon the judgments of the Hon'ble Court delivered in the following cases;

(1) U.P. Pollution Control Board and Others, Vs. Noria Industrial Ltd., And Another, reported in (2001) 2 SCC 549;

(2) Mohammed Gazi Vs. State of M.P. And Others, reported in (2000) 4 SCC 342;

(3) ABL International Ltd.And Another Vs. Export Credit Guarantee Corporation of India Ltd And Others, reported in (2004) 3 S.C.C. 553;

(4) Ghaziabad Development Authority Vs. Balbir Singh, reported in (2004) 5 S.C.C. 65;

(5) Kerala State Electricity Board Vs. M.R.F. Limited, reported in (1996) 1 S.C.C. Page 597;

(6) South Eastern Coalfields Ltd. Vs. State of M.P. And Others, reported in (2003) 8 S.C.C. 648;

(7) Oil & Natural Gas Commission Vs. M.C.Clell And Engineers, S.A., reported in (1999) 4 S.C.C. 327.

and requested to allow the present Special Civil Application and grant the reliefs as prayed for on the ground that the present petition is

maintainable in view of the Rules and the Bye-laws being discriminatory in nature.

7. The petition is opposed by the respondent through their learned Counsel, Ms. Dharmishtha Raval. An affidavit-in-reply is also filed on behalf of the respondent raising a preliminary contention that the present petition under Article 227 of the Constitution of India for money claim is not maintainable and the petitioners should be relegated to file a civil suit. It is further submitted that as the petitioners have a statutory remedy available by way of an appeal provided under Section 23L of the Securities Contract Regulation Act, 1956 to the Securities Appellate Tribunal against the impugned decision of the Stock Exchange and therefore requested not to grant any relief as prayed for. In support of her above submissions, she has relied upon the judgments delivered by

the Hon'ble Supreme Court in the following cases;

(1) Union of India and Others Vs. West Coast Paper Mills Ltd. And Another, reported in (2004) 3 SCC 458;

(2) Union of India and Others Vs. Oriental Enterprises and Another, reported in (1998) 3 SCC 501;

(3) Sheela Devi Vs. Jaspal Singh, reported in AIR 1999 S.C. 2859;

(4) K.K. Shrivastava etc. Vs. Bhupendra Kumar Jain and Others, reported in AIR 1977 S.C. 1703.

8. It is further submitted by Ms. Raval that the respondent Stock Exchange is regulated by the Act, Rules, Regulations and Bye-laws, and the amount was to be disbursed considering Rule 16 read with Bye-law 330. It is further submitted that as per Bye-law 330, the Defaulters' Committee is required to pay all assets received in the course of realisation into such Bank or keep them with the Clearing House in such names as the Governing Board may from time to time direct and shall distribute the same as soon as

possible pro rata upto 16 annas in a rupee but without interest among the Member-creditors whose claims are admitted in accordance with the Rules, Regulations and Bye-laws. It is submitted that out of the amount realized by selling the Membership Card and all other assets, margin money etc., the amount is distributed to all Member-creditors upto 16 annas in a rupee, i.e., full principal amount, and considering Bye-law 330 they are not entitled to any interest. It is submitted that the petitioners being Members of the Stock Exchange they are bound by the Bye-laws and it is not open for the petitioners Member-creditors to challenge the Bye-laws and/or contend that the Bye-laws are discriminatory. In support of her above submission, she has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Zoroastrian Co-operative Housing Society Ltd., and another Vs. District Registrar, Co-operative Societies (Urban) and Others, reported in 2005 AIR SCW Page 2317,*** and submitted

that restriction placed upon himself as a Member cannot be challenged on the ground of violation of fundamental right. She has relied upon paragraphs No. 21, 23, 24, 29 and 31 of the aforesaid Judgment.

9. It is further submitted by her that in fact the Stock Exchange fought the litigation against the Income Tax Department. It is submitted that in case if the Stock Exchange failed in convincing the Hon'ble Supreme Court, then the assets of the deceased Member would have vested with the Income Tax Department and would not have been available to the Defaulters' Committee to distribute the same to the petitioners and other Member-creditors. It is submitted that, as such the Rules, Regulations and Bye-laws of the Stock Exchange specifically prohibit the Stock Exchange from distributing any interest to the Creditor Members and for that purpose she has relied upon Bye-law 330.

10. It is further submitted that the Stock Exchange received request from the Member-creditors for distribution of the interest and the same was duly put up for scrutiny before the Defaulter Committee and the Defaulters' Committee decided unanimously that interest need not be distributed to the petitioners and therefore in view of the decision of the Defaulters' Committee the Stock Exchange did not distribute any interest.

11. It is further submitted that one Ms. Hira Vora as well as one Shantilal Lalbhai Chokshi have lodged their claims of Rs. 21,72,000 and Rs. 29,20,000 respectively before the Defaulters' Committee and the same was rejected by the Defaulters' Committee. It is submitted that as the said claims were rejected by the Defaulter Committee, Shantilal Lalbhai Chokshi has filed Civil Suit No. 3961 of 1996 in City Civil Court

at Ahmedabad and the said suit is still pending. It is further submitted that the said Ms. Hina Vora has filed a Special Civil Application before this Court which is also pending. It is submitted that in case the aforesaid persons were to succeed in their cases then out of the monies lying with the Stock Exchange, around Rs. 15 lakhs would have to be paid to these two claimants and even considering this also the amount cannot be disbursed to the petitioners Member-creditors by way of interest.

12. It is further submitted by Ms. Raval that when there is a specific agreement and Bye-law providing not to pay interest, the claim of the petitioners on equitable ground is not permissible as Bye-law No. 330 specifically provides for non-payment of interest.

13. It is further submitted by her that there is no past practice of making payment of interest

on the principal amount and the surplus amount is to be deposited in Investors Protection Fund which has been formed to compensate the investors for loss in event of the member being declared a defaulter. It is further submitted that it has also been decided to permit all the Stock Exchanges to utilise the interest income earned on Investors Protection Fund for investors education, awareness and research. It is further submitted that as there is no breach of contract, provisions of Section 73 of the Indian Contract Act do not come into play and therefore there is no question of payment of any compensation. It is therefore submitted that when the entire amount inclusive of principal amount is disbursed amongst the Member-creditors in accordance with law, Rules, Regulations and Bye-laws, and when the Bye-law does not permit disbursement of any interest amount, the decision of the respondent Stock Exchange not to pay interest on the principal amount as the same is specifically

prohibited, is just and proper and is not required to be interfered with. It is, therefore, requested to dismiss the present Special Civil Application.

14. Heard the learned advocates appearing on behalf of the parties. The short question, which requires consideration by this Court, is whether the surplus amount should be distributed on pro rata basis amongst the petitioner claimants and/or other claimants, as it represents interest earned on the amount of their claims decided and quantified as per the Act, Rules, Regulations and Bye-laws ?

15. It is not in dispute that, the respondent Stock Exchange is a 'Stock Exchange' duly recognised under the Provisions of the Securities Contracts (Regulation) Act, 1956 and of which the petitioners are the Members. The respondent Stock Exchange is required to conduct its affairs

in accordance with Rules, Regulations and Bye-laws of the Stock Exchange duly approved by the Central Government. The relevant Rules and the Bye-laws, for the purpose of determination of the present Special Civil Application and applicable in case of a Member declared as 'a defaulter', read as under;

Rule-6: A member shall not assign, mortgage, pledge, hypothecate or charge his right of membership or any rights or privileges attached thereto and no such attempted assignment, mortgage,pledge, hypothecation or charges shall be effective as against the Exchange for any purpose nor shall any right or interest in any membership other than the personal right or interest of the member therein be recognized by the Exchange. The Government Board shall expel any member of the Exchange who acts or attempts to act in violations of the provisions of this Rules.

Rule-7: Subject to the provisions of these Rules

a member shall have the right of

nomination which shall be personal and not transferable.

Rule-8: The right of nomination shall not be exercised by a former member who has been expelled or who has ceased to be a member under any Rules, Bye-laws or Regulations of the Exchange for the time being in force.

Rule-16: When as provided in these Rules the Governing Board has exercised the right of nomination in respect of a membership vesting in the Exchange the consideration received therefore shall be applied to the following purposes and in the following order of priority namely :-

(i) The payment of such subscriptions, debts, fines, fees, charges, expenses and other monies as shall have been determined by the governing Board to be due to the Exchange

or to be Clearing House and the payment of fines, fees, charges and other monies or any arrears thereof due to SEBI from the former members whose right of membership vest in the Exchange.

(ii) The payment of such debts, liabilities, obligations and claims arising out of any contracts made by such former member subject to the Rules, Bye-laws and Regulations of the Exchange as shall have been admitted by the Governing Board; provided that if the amount available in sufficient to pay and satisfy all such debts, liabilities, obligations and claims in full they shall be paid and satisfied pro-rata, and

(iii) The payment of the surplus, if any to the funds of the Exchange; provided that the Exchange in general meeting may as its absolute discretion

direct that such surplus be disposed of or applied in such other manner as it may deem fit."

Bye-law No.330: "The Defaulters'Committee shall at the risk and cost of the creditor members pay all assets received in the course of realization into such bank and/or keep them with the clearing House in such names as the Governing Board may from time to time direct and shall distribute the same as soon as possible prorata up to 16 annas in the Rupee ***but without interest*** among the creditor members whose claims are admitted in accordance with Rules, Bye-law and Regulations."

15.1. Rajesh Anubhai Shah was the Member of the Stock Exchange. He died on 7.2.1994 and his legal heirs and representatives expressed their inability to meet the obligations of the deceased, and therefore he was declared a 'deemed defaulter' on 12.2.1994. The Defaulters'

Committee came to be constituted as per Rule 140 of the Rules and the assets of the defaulter vested with the Defaulters' Committee. It was decided by the Defaulters' Committee to realise the assets of the defaulter, and also to sell/or dispose of the Membership right of the Member deceased Rajesh Anubhai Shah. By resolution dated 5.12.1994, the Governing Board of the Stock Exchange disposed of the Membership Right of the deceased Rajesh Anubhai Shah vested in the Stock Exchange in favour of UTI Securities Exchange Ltd., to the extent of Rs. 27 lakhs. It also appears that, the Stock Exchange realised in all Rs. 86,08,742 from the assets of the deceased inclusive of the Membership Right. The Stock Exchange invited the claims from the respective Member-creditors inclusive of the petitioners and the total amount of the claim against the deemed defaulters' account was Rs. 83,28,777.50 ps. All the Member-creditors submitted their respective claims as provided in Rule 16 of the Rules in the

year 1994. However before the amount could be disbursed as per the Rules, a provisional attachment order under under Section 281-B of the Income Tax Act, 1961 was issued by the Assistant Commissioner of Income Tax in respect of the Membership Card of the said Rajesh Anubhai Shah. The Income Tax Department also issued the Garnishee Notice dated 14.6.1995 under Section 226(3) of the Income Tax Act and therefore the amount could not be disbursed among the Member-creditors as per Rule 16 of the said Rules. Litigation reached upto Hon'ble Supreme Court and the same came to be terminated by the Hon'ble Supreme Court on 2.3.2001. Thereafter, the claims came to be considered and ascertained by the Stock Exchange, and after the decision of the Hon'ble Supreme Court, the monies kept with the Stock Exchange were distributed amongst the Members whose claims came to be adjudicated and admitted by the Stock Exchange. As the amount realised was Rs. 86,08,742, and the total amount

of the claim was Rs. 83,28,777.50 ps., the same came to be disbursed amongst the Member-creditors to the extent of 100% considering Rule 16 of the Rules. It appears that, during pendency of the litigation before the Hon'ble Supreme Court and the dispute with the Income Tax Department, the amount realised was deposited by the Stock Exchange in the Nationalised Bank and it earned interest to the tune of Rs. 63,19,755.20. There was a claim made by the petitioners Member-creditors and other Member-creditors to pay the principal amount with interest and to distribute and disburse the amount earned by way of interest on pro rata amongst the Member-creditors which came to be rejected by the Stock Exchange and therefore for the purpose of getting the interest amount on principal amount of their claims, the petitioners have approached this Court.

16. A preliminary contention is raised by the learned counsel appearing on behalf of the

respondent Stock Exchange to dismiss the petition as the petitioners have an alternative statutory remedy available by way of appeal under Section 23L of the Securities Contracts (Regulation) Act, 1956. However, considering the fact that the petition came to be admitted and ripe for Final Hearing, it is not deemed proper not to dismiss it on the ground of alternative remedy being available. So far as the objection with regard to maintainability of the petition under Article 226 of the Constitution of India for money claim, i.e., claim of interest, it is true that, normally, a petition under Article 226 of the Constitution of India is not maintainable and the petitioners are required to be relegated to file a civil suit. However, there is no specific bar on entertaining a petition with regard to money claim, and in an appropriate case where there are complex questions of law involved, the Court may entertain the petition, and, therefore, instead of relegating the petitioner to file a civil suit

in the facts and circumstances of the case, considering the law point and the questions which have arisen in the present Special Civil Application, it is decided to consider the same on merits.

17. As stated above, it is not in dispute that the respondent Stock Exchange is governed by the Act, Rules, Regulations and the Bye-laws. It is also not in dispute that the petitioners being Members of the Stock Exchange are also bound by the Rules, Regulations and Bye-laws of the Stock Exchange. The amount realised from the assets of the default is to be disbursed as per Rule 16 read with Bye-law No. 330. Rule 16(i) provides for payment towards the dues of the Stock Exchange or Clearing House and towards payment of fines, payment of fees, charges and other monies or any arrears thereof due to SEBI. Therefore, the first priority is given to the aforesaid dues. Thereafter, the amount is to be disbursed

to make payment of the debts, liabilities and obligations and claims arising out of any contracts made by such Member subject to the Rules, Regulations and Bye-laws of the Stock Exchange as shall have been admitted by the Governing Board. It is also provided under Rule 16(ii) that if the amount available is insufficient to pay and satisfy all such debts, liabilities, obligations and claims in full, they shall be paid pro rata. Bye-law 330 provides that the Defaulters' Committee shall pay all assets received in the course of realisation and/or distribute the same pro rata upto 16 annas in the rupee but ***without interest*** among the Member-creditors whose claims are admitted in accordance with Rules, Regulations and Bye-laws. Therefore, as per Bye-law 330, the Defaulters' Committee is required to distribute the assets/amount realised amongst the Member-creditors pro rata upto 16 annas in the rupee but without interest. Thus, the petitioners, being

Members of the Stock Exchange, are bound by the Bye-laws, in particular Bye-law 330. As held by the Hon'ble Apex Court in the case of *Zoroastrian Co-operative Housing Society Ltd. And another Vs. District Registrar, Co-operative Societies (Urban) and Others,* [supra], a Member is bound by the Bye-laws and being a Member it is not open for him to challenge the Bye-laws on the ground of violation of fundamental right. Considering the above proposition of law, and Rule 16 read with Bye-law 330 of the Rules and Bye-laws, where no provision is made for payment of interest on the principal amount/claims admitted and adjudicated by the Stock Exchange, no claim of interest on any amount is entertainable. What is provided is to disburse and distribute the amount to the Member-creditors upto 100% of the principal amount/claim and, therefore, relying upon Rule 16 read with Bye-law 330 when interest payment is denied, it cannot be said that the respondent Stock Exchange has acted in any way

contrary to the Rules and/or the Bye-laws. Ms. Raval is right in her submission that when there is a specific agreement and/or provision, there is no question of considering the equity, and that equity is required to be considered when there is no provision and/or agreement.

18. It is further required to be noted that as per the Income Tax Department, the Membership Card was the property belonging to SEBI and does not vest with the Stock Exchange and the same was disputed by the Stock Exchange. The stand of the Stock Exchange was that, under the Rules, Regulations, and Bye-laws, on death of a Member and upon adjudication of a Member as a deemed defaulter by the Governing Board of the Stock Exchange, the Member's right of nomination ceases and it vests with the Stock Exchange free from all rights, claims, or interests of such Member or any other person claiming through such Member and the Governing Board is entitled to deal with

or dispose of such right of membership as it may think fit, and the Stock Exchange fought the litigation in the High Court as well as Hon'ble Supreme Court and spent for the same. It is required to be noted that if the Stock Exchange would have lost even before the Hon'ble Supreme Court, the claimants/Member-creditors would not have got even 16 annas in the rupees of their claims, and their claims would have been subsequently pro rata or might have been totally wiped out. It is also required to be noted that the amount could not be disbursed because of the stay granted by the Hon'ble Supreme Court in a litigation by the Income Tax Department and the same ultimately came to be disposed of. Considering the statutory provisions of Rule 16 and Bye-law 330, the interest on the claims of the respective petitioners on prorata basis is rightly denied as the same is not sustainable.

19. It is also required to be noted that one

Civil Suit and one writ petition are pending, before the Civil Court and this Court, filed by two alleged claimants and their claim is to the tune of Rs. 50 lakhs approximately. If ultimately by chance those alleged claimants succeed, then in that case, the Stock Exchange might have to pay the said amount to those claimants and therefore also the petitioners cannot be paid any interest on their respective claims.

20. It is further required to be noted that the amount of interest is even otherwise to be transferred to the Investors Protection Fund for the benefit of investors and the same is as per the Rules and Regulations of the Stock Exchange. The contention on behalf of the petitioners, that the Members cannot be denied the amount of interest and the investors cannot be paid the amount at the cost of the Members, is not well-founded for the reason that as stated above as

provided under the Rules, Regulations and Bye-laws, the Defaulters' Committee is required to disburse the amount upto 16 annas in the rupees without interest, and hence the amount paid to the investors will not be at the cost of the Member-creditors. It is pertinent to note that the Defaulters' Committee has taken a conscious decision that interest accrued cannot be distributed pro rata among the claimants and the Stock Exchange is liable to pay upto 100% of their claims out of the assets of the defaulter member realised by the Stock Exchange.

21. As regards the decisions of the Hon'ble Supreme Court, relied upon by the learned advocate appearing on behalf of the petitioners with regard to payment of interest, it is required to be noted that the Bye-laws do not provide for payment of interest, and the decisions of the Hon'ble Supreme Court are on the principle of equity and/or where there was no

specific provision with regard to interest. As stated above, when the Bye-law No. 330 itself provides for disbursement of amount without interest, it is not possible to accept the submission on behalf of the petitioners for payment of interest on their claims admitted and adjudicated by the Stock Exchange. Grant of interest on the claims of the Member-Creditors would be contrary to what is provided in the Bye-law No. 330 and Rule 16 which are binding upon the petitioners as 'Members' of the Stock Exchange. Under the circumstances, the prayer of the petitioners to pay interest on claims, on prorata basis, is not required to be granted.

22. For the reasons stated above, the petition fails and shall stand dismissed. Rule is discharged. However, in the facts and circumstances, there will be no order as to costs.

[M.R. Shah, J.]

RMR.